

KEYRON L. BINNS #E94600
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FILED

AUG 13 2021

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA
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KEYRON LAMONTE BINNS (PLT. #1),
SHARIF ALI GENTRY SR. (PLT.#2),
Plaintiff's,

v.

AMERICAN GENERAL LIFE &
ACCIDENT INSURANCE CO., et al.,
Defendant's.

Case No. 2:20-CV-1120-TLN-KJN
(PS)

OBJECTION TO THE MAGISTRATE
JUDGES FINDINGS & RECOMMEND-
ATIONS, FRCP 72(a)

OBJECTION TO THE MAGISTRATE JUDGES
FINDINGS & RECOMMENDATIONS FRCP 72(a)

Plaintiff's objects to the U.S. District Court's Magis-
trate Judge (KENDALL J. NEWMAN) Findings and Recommendations,
pursuant to Federal Rule of Civil Procedures, Rule 72(a), and
these Objection's are made in conjunction with the following deem-
ed as true: 1.) Laser copy of both the Insurance Policy (CONTRACT)
& Premium Reciept Book to Policy #5433839134; 2.) Declaration's
from both Plaintiff's (KEYRON LAMONTE BINNS & SHARIF ALI GENTRY);
3.) Civil Complaint (42 U.S.C. 1983) filed against all the Defend-
ant's (AIG); 4.) All EXHIBIT'S, EXHIBIT "A" SHARIF'S PACKET,
EXHIBIT "B" KEYRON'S PACKET, EXHIBIT "C" AIG PACKET 5/23/2018,
EXHIBIT "D" AIG PACKET 8/27/2018; 5.) OBJECTION TO THE MOTION TO
DISMISS; 6.) OBJECTION TO THE REPLY TO DISMISS; and 7.) the
Magistrate judge's Findings & Recommendation's is directly in
conflict with the terms of the Contract (Insurance Policy #543383-
9134), as well as the above factual discovery provided to both the
Court and Defendant's (AIG). (See FRCP 26(a)(1)(D) & (2)(A))

Background

Plaintiff's Grandmother (Elizabeth Daw) in 1954 purchased a life insurance policy (The "CONTRACT") on the life of her only child and daughter (Pamela Allice Morris), both plaintiff's Binns & Gentry's mother. Plaintiff's Grandmother (Daw) paid an advanced premium of \$220.00 on August 04, 1954, the life insurance agreement #5433839134 (CONTRACT) reveals that weekly premium's of \$55.00 were paid for 1040 weeks (20 years), and records demonstrate that plaintiff's Grandmother over-paid in premium's. The Life Insurance Policy #5433839134 were fully paid-up on July 05, 1974, and Daw passed (Died) Feb. 28, 1984. The Insurance Policy #5433839134 (CONTRACT) fully matured on August 16, 2016, but plaintiff's Mother (Insured) passed (Died) Dec. 05, 2017. Thereafter, Sharif Ali Gentry & Saterria Gentry found paper's that revealed Policy Number #5433839134, plus noted that it had fully been paid-up to National Life & Accident Insurance Company, found that (AIG) American General Life & Accident Insurance Company had taken over as the new Insurer, then reached out to them, and initially (AIG) tried to allege that the Insurance Policy #5433839134 (CONTRACT) lapsed, but Plaintiff Sharif Ali Gentry stressed how could a fully paid-off Policy lapse. only then did (AIG) acknowledge the Policy existed. (AIG) required a change of beneficiary, forwarded nine (9) pages to be completed, and certified by an Notary Public, which was done on Dec. 27, 2017, then faxed to (AIG) on Dec. 29, 2017.

On Jan. 8, 2018 (AIG) informed the Plaintiff's that it "acknowledge[d] the claim/policy #0018000859 on Pamela Morris," but informed both plaintiff's that the death certificate recieved by them did not allege the cause of death, because the Policy was fifty thousand or more a Cause of Death would be required. (See EXHIBIT "A" SHARIF'S PACKET pg. 1; EXHIBIT "B" KEYRON'S PACKET pg. 1) Plaintiff (Binns) first reply letter back to the Defendant's (AIG), was to request a copy of the Insurance Policy (CONTRACT), but the Defendant's (AIG) response back were in the form of a

1 Check in the amount of \$500.60. Plaintiff (Binns) second reply to
2 the Defendant's (AIG), were to first question three different things
3 about the Check: 1.) What is it for ? ; 2.) Why was this Check have
4 a different Claim #5433839134, then their initial correspondence
5 Claim #0018000859 ? ; and 3.) Why was not 1% interest added to the
6 benefit of \$500.00 ? [Which the Check demonstrates, but .60¢ was
7 only added. This second letter Plaintiff (Binns) again requested
8 a copy of both Insurance Policies [Second Request!], but told the
9 Plaintiff's that they cannot send-out copies of Insurance Policies
10 over 10 years, but provided a copy of the Application for the
11 Plaintiff's records. (See EXHIBIT "B" KEYRON'S PACKET pgs. 1A, 3A,
12 5A, 6A) On April 2, 2018 Plaintiff (Binns) this letter in conjunc-
13 tion to the Defendant's (AIG) admitting that they have recieved a
14 Short Proof of Death Form listing the cause of death, but failed to
15 explain what me and my brother (Sharif A. Gentry) have to do in
16 order to recieve the "Money's" owed under the Insurance Policy ?
17 The Defendant's (AIG) responded in the form of another check to
18 Plaintiff (Binns) only, for more money \$501.84. (See EXHIBIT "B"
19 KEYRON'S PACKET pgs. 7A, 8A-B) Defendant's (AIG) on May 23, 2018
20 submitted EXHIBIT "C" AIG PACKET 5/23/2018 [Pages 1-24], which the
21 Defendant's (AIG) tried to pass-off a forged weekly premium that
22 reflected "N/A," plus falsely allege that Plaintiff's Grandmother
23 (Daw) only paid \$28.60 annual premiums. (Pages 1-2, 4-10, 18-20)
24 Plaintiff (Binns) call's out the Defendant's (AIG) on this Fraud,
25 the Defendant's (AIG) respond by calling an Investigations. (See
26 EXHIBIT "B" KEYRON'S PACKET pg. 12A) On August 05, 2018 the
27 Plaintiff (Binns) sends a photo-copy of the real Insurance Policy
28 to the Defendant's (AIG), (See EXHIBIT "B" KEYRON'S PACKET pg. 19A)
Defendant's (AIG) on August 27, 2018 submitted EXHIBIT "D" AIG
PACKET 8/27/2018 [Pages 1-10], which the Defendant's (AIG) now
tries to pass-off another forged weekly premium that reflect's
".55¢," and explaining: "Unfortunately, the Schedule page on the
information received did not contain the amount of the weekly
premium payable to provide coverage." (See EXHIBIT "D" AIG PACKET
8/27/2018 pg. 1, 4-10) Plaintiff (Binns) call's out the Defendant's
(AIG) on this Fraud, the Defendant's (AIG) respond by calling an
second Investigations. (See EXHIBIT "B" KEYRON'S PACKET pg. 13A)

1 The Defendant's (AIG) call's two more Investigations on Sept. 11,
2 2018 and Oct. 08, 2018 (See EXHIBIT "B" KEYRON'S PACKET pgs. 15A-
3 16A), but none of these so-called Investigation's findings or
4 conclusions were ever shared with the Plaintiff's.

5 Plaintiff's found the Insurance Policy #5433839134
6 (CONTRACT) in March of 2018, then contacted both the California
7 Department of Insurance (CDI) and Better Business Bureau (BBB) in
8 April of 2018, plus provided each of these Office's with a photo-
9 copy of the Insurance Policy #5433839134. Then each of these
10 Office's informed the Plaintiff's to file an Law Suit, because the
11 Court's are better suited to deal with Issue's like these.

12 Plaintiff's Grandmother (Daw) Insurance Policy #543383-
13 9134 (CONTRACT) was with an Tennessee principal place of business
14 (NATIONAL LIFE & ACCIDENT INSURANCE COMPANY), which the weekly
15 premiums were paid to thier Los Angeles Branch at 1134 West
16 Manchester Ave., L.A., CA. 90044. American General Life &
17 Accident Insurance Company (AIG) took over as the new Insurer's
18 in 1982 sometimes, their principal place of Business is also
19 Tennessee too, and the President & CEO Brian Duperreault was
20 advised about his employee's by plaintiff (Binns) on Oct 1, 2018,
21 never attempted to resolve the problem. (See EXHIBIT "B" KEYRON'S
22 PACKET pg. 20A, 15A)
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Legal Standards

The United States Supreme Court held: In re Sawyer, We do not rest our conclusion in this case, in any degree, upon the ground, suggested in argument, that the bill does not show a matter in controversy of sufficient pecuniary value to support the jurisdiction of the Circuit Court; because an apparent defect of its jurisdiction in this respect, as in that of citizenship of parties, depending upon an inquiry into facts which might or might not support the jurisdiction, can be availed of only by appeal or writ of error, and does not render its judgment or decree a nullity. 124 U.S. 200, 221, 8 S. Ct. 482, 31 L. Ed 402 (1888); See also Tex. Propane Gas Ass'n v. City of Houston, 2021 Tex. LEXIS 302 (April 16, 2021) Once the court has diversity jurisdiction, subsequent events generally do not affect that jurisdiction. The "long standing principle" of St. Paul Mercury Indem. Co. v. Red Cab Co., [a defect in diversity jurisdiction exists, if at all, only when a case is filed in Federal Court or removed to Federal Court from State Court. If a jurisdictional defect in existence when a suit is filed or removal of a case-whether one party changes its residence thereby destroying complete diversity, or the amount in controversy drops below the jurisdictional amount are not "defects" in the court's diversity jurisdiction at all. 303 U.S. 283, 58 S. Ct. 586, 82 L. Ed 845 (1938). In Grinnell Mut. Reinsurance Co. v. Shierk, JMC steel last argues on that point that even if this claim survives, the damage would be so limited that they may no longer meet the amount-in-controversy threshold for diversity jurisdiction under 28 U.S.C. §1332. However, the amount in controversy is determined as of the time the complaint is filed. 121 F. 3d 1114, 1116-1117 (7th. Cir. 1997) ("It is well established that the requirements for diversity jurisdiction must be satisfied only at the time a suit is filed.") See also Schulz v. Visionary Props., 2015 U.S. Dist. LEXIS 160756 (Dec. 1, 2015).

When facing a motion to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2), the plaintiff bears the burden of establishing that jurisdiction is proper. U.S. v.

1 Swiss Am. Bank, Ltd., When an evidentiary hearing is not held to
2 determine whether personal jurisdiction exists, the plaintiff must
3 make a prima facie showing of jurisdiction, rather than the
4 preponderance of evidence standard, by "citing to specific evidence
5 in the record that , 'If credited, is enough to support findings of
6 all facts essential to personal jurisdiction.'" 274 F.3d 610, 618
7 (1st. Cir. 2001); Snell v. Bob Fisher Enter., Inc., 115 F. Supp.
8 2nd. 17, 20 (2000) (quoting Bolt v. Gar-Tec Products, 967 F.2d
9 671, 675 (1st. Cir. 1992). "To defeat a motion to dismiss when
10 the court uses this method the plaintiff must make the showing as
11 to every fact required to satisfy 'both the form's long-arm statute
12 and the due process of the Constitution.'" Bolt, 967 F.2d at 675.
13 In so doing, the plaintiff must make affirmative proof beyond the
14 pleading. Id. (citations omitted). When determining whether the
15 plaintiff has made the requisite prima facie showing, the court
16 considers the pleadings, affidavits, and exhibits filed by the
17 parties. Id., Snell, 115 F. 2d at 20. For the purposes of such a
18 review, plaintiff's properly supported proffers of evidence are
19 accepted as true and disputed facts are viewed in the light favor-
20 able to the plaintiff, however unsupported allegations in the
21 pleadings need not be credited. Bolt, 967 F. 2d 675.

22 The Court in Aetna Gas & Sur. Co. v. Jeppeson & Co.,
23 held: While the last sentence of FRCP 56(c) permits an "interlocu-
24 tory" judgment on the whole-issue of liability alone, "although
25 there is a genuine issue as to the amount of damages," and, while
26 there are no provisions in the FRCP, or 28 U.S.C. §1291 or §1292
27 which permit a "partial summary judgement on the whole issue of
28 liability in a tort case, subdivision (d) of FRCP 56 does permit
the court to effectively find what ultimate material facts do exist
and what ultimate "material facts are actually, and in good faith
controversied" and make an order "specifying the facts which appear
without substantial controversy,... and directing such further
proceedings in the action as are just." 440 F. Supp. 394, 405
Nevada District, Nov. 4, 1977)

1 In Parchinger v. MGM Grand Hotel-Las Vegas, Inc.,
2 held that the amount in controversy is normally determined from
3 the face of the pleadings. 802 F. 2d 362, 364 (9th. Cir. 1986)
4 In seminal case, St. Paul Mercury Indemnity Co. v. Red Cab Co.,
5 303 U.S. 283, 288-289, 82 L. Ed 845, 58 S. Ct. 586 (1938), the
6 Supreme Court described the test this way:

7 The rule governing dismissal for want of
8 jurisdiction in cases brought in federal court is
9 that, unless the law gives a different rule, the
10 sum claimed by the plaintiff controls if the
11 claim is apparently made in good faith.

12 It must appear to a legal certainty that the claim
13 is really for less than the jurisdictional amount to justify
14 dismissal. Id. (footnotes omitted).

15 Wright, Miller, and Cooper described the application of the legal
16 certainty test:

17 Generally speaking, the legal certainty test makes
18 it very difficult to secure a dismissal of a case on the ground
19 that it does not appear to satisfy the jurisdictional amount
20 requirement. Only three situations clearly meet the legal
21 certainty standard:

22 1.) When the terms of the Contract limit the
23 plaintiff's possible recovery; 2.) When specific
24 rule of law or measure of damages limits the
25 amount of damages recoverable; and 3.) When
26 independant facts show that the amount of damages
27 was claimed merely to obtain federal court
28 jurisdiction. Id. at page 364

29 Generally, a dismissal for lack of subject-matter
30 jurisdiction should be without prejudice. See Frigard v. United
31 States, 862 F. 2d 201, 204 (9th. Cir. 1988) (per curiam)
32 Dismissal for lack of personal jurisdiction should also be without
33 prejudice. See Grigsby v. CMI Corp., 765 F. 2d 1369, 1372 n.5
34 (9th. Cir. 1985).

OBJECTION'S TO THE MAGISTRATE JUDGE FINDINGS
& CONCLUSIONS

ARGUMENT

The Magistrate Judge Kendall J. Newman correctly note on page 4 of his Findings & Recommendations, at lines 7-8 that the plaintiff's: "Facially, the complaint satisfied the amount-in-controversy, and so the undersigned ordered it be served." (ECF No. 14) See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 58 S. Ct. 596, 82 L. Ed 845 (1938), Aetna Gas & Sur. Co. v. Jeppeson & Co., 440 F. Supp. 394, 405 (Nevada, Nov. 4, 1977, Parachinger v. MGM Grand Hotel-Las Vegas, Inc. 802 F. 2d 362, 364 (9th. Cir. 1986). Now the Plaintiff's on June 3, 2020 filed a Civil Complaint (42 U.S.C. 1983) against the Defendant's (AIG), along with a Laser Copy of both the Contract (Insurance Policy) & Premium Receipt Book to Policy #5433839134, but filed under the wrong Jurisdiction. However, the Magistrate Judge Kendall J. Newman granted the plaintiff's to file a First Amended Complaint with the correct jurisdiction, so on July 31, 2020 the plaintiff's then filed the first amended complaint under "Complete Diversity Jurisdiction." (See FRCP 26(a)(1)(D).)

The Magistrate Judge's Findings & Recommendations at page 2 line's 17-19 recognizes a "Genuine Issue of Material Fact," acknowledging: "Binns believed that in 1954, his grandmother paid \$220 up-front payment on the Policy, plus a weekly premium of \$55 over twenty years, for a Policy with 3% interest accruing." AGL's position was that Daw paid \$28.60 per year, or \$0.55 per week, from 1954-74, for a \$1,000 benefit with no accrued interest."

Now the Magistrate Judge's Findings & Recommendations on pg. 4 line's 8-11 incorrectly allege: "Defendants, however, raise a factual challenge to plaintiff's assertions of jurisdiction, arguing plaintiff cannot claim good faith his entitlement to these damages." "To settle this matter, the court turns to the extrinsic evidence submitted by both Binns and AGL." The rule governing policy interpretation require us to look first to the

1 language of the contract in order to ascertain its plain meaning or
2 the meaning a layperson would ordinarily attach to it. (Civil Code
3 §1638; Reserve Insurance Co. v. Pisciotta (1982) 30 Cal. 3d 800
4 [180 Cal. Rptr. 628])

5 California Civil Code §1638: The language of a
6 contract is to govern its interpretation, if the
7 language is clear and explicit, and does not involve
8 an absurdity.

9 Insurance policy is **but** contract to be construed
10 from language used; and when terms are plain and
11 unambiguous, it is duty of courts to hold parties to
12 such contract. Laventhal v. Fidelity & Casualty Co.
13 (Nov. 5, 1908), 9 Cal. App. 275, 98 P. 1075, 1908
14 Cal. App. Lexis 138

15 California Civil Code §1641: The whole of a contract
16 is to be taken together, so as to give effect to every
17 part, if reasonably practicable, each clause helping
18 to interpret the other.

19 California Civil Code §1644: The words of a contract
20 are to be understood in their ordinary and popular
21 sense, rather than according to their strict legal
22 meaning, unless a special meaning is given to them by
23 the parties in a technical sense, or unless a special
24 meaning is given to them by usage, in which case the
25 latter must be followed.

26 California Civil Code §1646: A Contract is to be
27 interpreted according to the law and usage of the
28 place where it is to be preformed, or, if it does not
indicate a place of performance, according to the law
and usage of the place where it is made. See also
Frontier Oil Corp. v. RLI Ins. Co., 153 Cal. App. 4th
1436, 1459, 63 Cal. Rptr. 3d 816 (2007) Although
California does not apply the Restatement, its statu-
tory factors are similar. Cohen v. Formula, Inc., 750
F. Supp. 2d 495, 502.

29 Judicial interpretation is controlled by words, as
30 they are understood in their ordinary and popular sense. (Civ.
31 Code §1644; Waller v. Truck Ins. Exchange, Inc., (1995) 11 Cal.
32 4th 1, 18 [44 Cal. Rptr. 2d 370].) The function of the court in
33 interpreting an instrument "is simply to ascertain and declare
34 what is in its terms or in substance contained therein, not to

1 insert what has been omitted, or to omit what has been inserted."
2 (Code Civ. Proc. §1858; Safeco Ins. Co. v. Robert S., supra, (2001)
3 26 Cal. 4th 758, 762-764 [110 Cal. Rptr. 2d 844]; Jensen v. Traders
4 & General Ins. Co. (1959) 52 Cal. 2d 786 [345 P. 2d 1].)

5 Now in the Plaintiff's case before the Court, the
6 Magistrate Judge's Findings & Recommendations incorrectly allege:

7 1.) "Defendants, however, raise a factual challenge to plaintiff's
8 assertions of jurisdiction,"

9 2.) "To settle this matter, the court turns to the extrinsic
10 evidence submitted by both Binns and AGL." (See Findings & Recomm-
11 endation pg. 4 lines 8-11)

12 3.) "AGL's position was that Daw paid \$28.60 per year, or \$0.55
13 per week, from 1954-74, for a \$1,000 benefit with no accrued
14 interest." (See Findings & Recommendation pg. 2 lines 18-20)

15 first, the Magistrate Judge's Finding & Recommendation has failed
16 to simply ascertain and declare what is in the Insurance Policy
17 (CONTRACT) #5433839134 terms or in substance contained therein,
18 which the Contract is clear and explicit language involved. The
19 Magistrate Judge's Findings & Recommendations omit's : 1.) the
20 \$55.00 weekly premiums (Laser copy of Insurance Policy pg. 4);
21 2.) 3% interest for 62 years (Laser copy of Insurance Policy pg.
22 2); 3.) Nonforfeiture Benefits, for a Policy without Indebtedness
23 for which the amount of Insurance is *\$100 (Laser copy of Insurance
24 Policy pg. 3) Then the Findings & Recommendations also omit all
25 of this language dealing with values: "The period of Extended
26 Insurance and the amount of Paid-up Endowment Insurance provided
27 herein shall each be such that the net single premium therefor,"
28 "All values and net premiums hereunder" "*To obtain any value for
this policy," "The terminal value of the policy is an amount
equal to the net single premium computed as of the date of default
for the Extended Insurance and Pure Endowment, less any indebted-
ness to the Company secured by the policy." Now all of this very
important language is inserted into the Insurance Policy (CONTRACT
#5433839134), but the Court used extrinsic evidence to base the
Findings & Recommendations upon. On page 4 of the Laser copy of
the Insurance Policy (CONTRACT) inside of the weekly premium box

1 their are two distinct column's (Dollors-Cents), clearly reads
 2 that \$55.00 WEEKLY PREMIUMS were the agreement between plaintiff's
 3 Grandmother (Daw) and National Life & Accident Insurance Company,
 4 which all of the extrinsic evidence support. Furthermore, the
 5 Court understands that a decimal point (.) is what separates
 6 between dollors and cents (See ENCLOSURE). The Defendant's (AIG)
 7 attempted to hide the Insurance Policy from the plaintiff's by
 8 their refusual to furnish one in January through April of 2018,
 9 but chose to provide the Application to the plaintiff's for our
 10 records. However, this Application clearly shows the decimal
 11 point behind the \$220.00 Advance Premium paid on Aug. 04, 1954,
 12 plus this 55 that's also alleged on the same page does not have a
 decimal point either in front or back of it, could only be one
 amount of money under American Currency laws. (EXHIBIT "B" KEYRON
 'S PACKET pgs. 2A, 5A, and 6A) Cal. Civ. Code §1638,1639,1641,1644
1646; Code Civil Proc. §1858.

13 Secondly, The Magistrate's Judge's Findings & Recommendations
 14 clearly inserted thee below Defendant's (AIG) words as an allege
 15 factual challenge to plaintiff's assertions of diversity jurisd-
 16 iction: "NA WEEKLY PREMIUM" ; "0.55 WEEKLY PREMIUM" ; "\$28.60
 17 YEARLY PREMIUM" ; "no accrued interest", which neither the
 18 Insurance Policy (CONTRACT) or extrinsic evidence support's.
 19 **(Does not support just one of them.)** The Magistrate Judge's
 20 Findings & Recommendation is purely based from the Defendant's
 21 (AIG) hypothetical, conjecture, and speculations which are not
 22 supported by the clear and unambiguous language of the Contract
 23 (Insurance Policy #5433839134). A policy provision is ambiguous
 24 when it is susceptible to two or more reasonable constructions.
 25 (Waller v. Truck Ins. Exchange, Inc. (1995) 11 Cal. 4th 1, 18
 26 [44Cal. Rptr. 370].) Language in an insurance policy is "inter-
 27 preted as a whole, and in the circumstances of the case, and can-
 28 not be found to be ambiguous in the abstract." When determining
 whether a particular policy provides a potential for coverage and
 a duty to defend, the Court's are guided by the principle that
 interpretation of an insurance policy is a question of law. (AIU
Ins. Co. v. Superior Court (1990) 51 Cal. 3d 807, 818 [274 Cal.
Rptr. 820] [hereafter AIU].) The rules governing policy interpre-

1 tation require us to look first to the language of the contract in
2 order to ascertain its plain meaning or the meaning a layperson
3 would ordinarily attach to it. (Civ. Code §1638; Reserve Insurance
4 Co. v. Pisciotta (1982) 30 Cal. 3d 800 [180 Cal. Rptr. 628])

5 The interpretation of an insurance policy is usually a
6 question of law. Waller v. Truck Ins. Exchange Inc., 11 Cal. 4th 1,
7 18, [44 Cal. Rptr. 2d 370, 900 P. 2d 619 (1995)]; See GGIS Ins.
8 Service Inc. v. Superior Court, 168 Cal. App. 4th 1493, 1507,
9 [86 Cal. Rptr. 3d 515 (2008)] ("The interpretation of a contract,
10 including the resolution of any ambiguity, is solely a judicial
11 function, unless the interpretation turns on the credibility of
12 extrinsic evidence."). An insurance policy is a contract, so the
13 normal rules of contract interpretation apply. See Safeco Ins. of
14 America v. Robert S., 26 Cal. 4th 758, 762-763, [110 Cal. Rptr. 2d
15 844, 28 P. 3d 889 (2001)] See also Glasswerk LA, Inc. v. Liberty
16 Ins. Corp., 2021 U.S. Dist. LEXIS 46882.

17 In the plaintiff's case that is before the Court, the
18 Magistrate Judge's Findings & Recommendation should have relied or
19 been supported by the Contract (Insurance Policy #5433839134),
20 which was the exact direct evidence (Insurance Policy) that the
21 Magistrate Judge Kendall J. Newman allowed the plaintiff's to
22 proceed under Diversity Jurisdiction (28 U.S.C. 1332) at the filing
23 of this Civil Complaint (42 U.S.C. 1983). Furthermore, to establish
24 federal subject matter jurisdiction under diversity rules, the
25 proponent must allege (1) the parties are completely diverse, and
26 (2) the amount in controversy exceeds \$75,000.00. See 28 U.S.C.
27 § 1332(a)(1); McNutt v. Gen. Motors Acceptance Corp. of Ind., 298
28 U.S. 178, 189 (1936). To determine whether Section 1332(a)'s
amount in controversy requirement is met, the court utilizes the
"legal certainty" test. see Pachinger v. MGM Grand Hotel-Las Vegas
Inc., 802 F.2d 362, 363-364 (9th Cir. 1986). However, the Magis-
trate Judge's Findings & Recommendations is based upon extrinsic
evidence, plus completely ignores the CONTRACT (Insurance Policy
#5433839134), which does demonstrate's: 1.) the weekly premiums of

1 \$55.00 paid for over 1040 weeks; 2.) 3% interest for now 67 years;
2 3.) two (2) Nonforfeiture Benefits for a Policy "without indebted-
3 ness" (One inside of the first 20 years [\$20,267.66], then the
4 second one subsequent to the 20 years [47 years now].).

5 The Magistrate Judge's Findings & Recommendations has
6 completely turned away from the Contract #5433839134 (Laser copy
7 of the Insurance Policy), then adopted the Defendant's (AIG)
8 "words" of speculation, hypothetical, and conjecture as factual
9 (Extrinsic Evidence) to now appose plaintiff's "Facially, the
10 complaint satisfied the amount-in-controversy, and so the under-
11 signed ordered it be served." (See Findings & Recommendations at
12 page 4 lines 7-11) See St. Paul Mercury Indem. Co. v. Red Cab Co.
13 303 U.S. 283, 58 S. Ct. 596, 82 L. Ed. 845 (1938), Aetna Gas &
14 Sur. Co. v. Jeppeson & Co., 440 F. Supp. 394, 405 (Nevada, Nov.
15 4, 1977, Parachinger v. MGM Grand Hotel-Las Vegas, Inc. 802 F. 2d
16 362, 364 (9th. Cir. (1986). As a question of law, the interpre-
17 tation of an insurance policy is reviewed de novo under well-
18 settled rules of contract interpretation. E.M.M.I. Inc. v. Zurich
19 American Ins. Co., 32 Cal. 4th. 465, 470, 84 P. 3d 385, 389, 9
20 Cal. Rptr. 3d 701 (2004); Waller v. Truck Ins. Exchange, Inc.,
21 (1995) 11 Cal. 4th 1, 18 [44 Cal. Rptr. 2d 370,, 900 P. 2d 619].)
22 The fundamental rules of contract interpretation are based on the
23 premise that the interpretation of a contract must give effect to
24 the 'mutual intention' of the parties. 'Under statutory rules of
25 contract interpretation, the mutual intention of the parties at
26 the time the contract is formed governs interpretation. (Civil
27 Code §1636) Such intent is to be inferred, if possible solely
28 from the written provisions of the contract. (Civil Code §1639)
The "clear and explicit" meaning of these provisions interpreted
in their "ordinary and popular sense," unless "used by the parties
in a technical sense or a special meaning is given to them by
usage" (Civil Code §1644), controls judicial interpretation.
(Civil Code §1638).

1 California Code Civil Procedure §1858:

2 In the construction of a statute or
3 instrument, the office of the Judge is simply to
4 ascertain and declare what is in terms or in
5 substance contained therein, not to insert what
6 has been omitted, or to omit what has been inserted;
7 and where there are several provisions or
8 particulars, such a construction is, if possible,
9 to be adopted as will give effect to all.

10 A policy is ambiguous if "it is capable of two or
11 more constructions, both of which are reasonable. "Waller v. Truck
12 Ins. Exchange Inc., 11 Cal. 4th. 1 [44 Cal. Rptr. 2d 370, 900 P.
13 2d 619,627 (1995)... When an ambiguity exists, the provision
14 should be "interpreted most strongly against the party who caused
15 the uncertainty to exist." Cal. Civil Code §1654. Moreover, in
16 the context of insurance policies, "'any ambiguous terms are
17 resolved in the insureds favor, consistent with the insureds
18 reasonable expectations.'" E.M.M.I. Inc. v. Zurich Am. Ins., 32
19 Cal. 4th 465 [9 Cal. Rptr. 3d 701, 84 P. 3d 385, 389 (2004)
20 (quoting Safeco Ins. Co. v. Robert S., 26 Cal. 4th 758 [110 Cal.
21 Rptr. 2d 844, 28 P. 3d 889, 893 (2001).

22 Both the Magistrate Judge's Finding & Recommendation
23 and the Defendant's (AIG) tries to turn an blind eye to the
24 CONTRACT, which clearly and unambiguously demonstrate's that
25 weekly premiums of \$55.00 were paid for over twenty (20) years,
26 plus two (2) Nonforfeiture Benefits, which applies to Insurance
27 Policy WITHOUT INDEBTEDNESS, and then 3% Interest for the entire
28 period of the Contract's continuation [62 years] (#5433839134).
However, they both suggest that this MAXIMUM AMOUNT OF INSURANCE
\$1,000* is what's owed to the plaintiff's, but also simply not
acknowledge this *Asterisk character too, which fully explain's
how the computations are completed each year. (NOTE: Policy years
are counted from the Date of Issue and its anniversaries.) The
language inside of this Contract is "clear and explicit" with only
"ordinary" usage, so plaintiff will do the simple computation on
this \$1,000 stated in the Schedule:

The *asterisk is a reference mark or an indication of the omissions of how the computations are done in connection to this \$1,000.00.

"*For Ages at Issue 2 and over the maximum amount is in effect from Date of Issue; during the first policy year the Amount of Insurance in effect per \$100 stated in the Schedule shall be \$25 during the first three months and \$50 thereafter."

NOTE: \$100.00 is divided into the \$1000.00= 10 Times;

In the first year for Ages at Issue 2 and over, which the \$25.00 gets multiplied by every \$100.00 inside of the \$1,000.00 ($\$25.00 \times 10 = \250.00), then this \$250.00 is multiplied by the three Months ($\$250.00 \times 3 = \750.00); and finally the last 10 Months gets done by \$50.00, the \$50.00 gets multiplied by every \$100.00 inside of the \$1,000.00 ($\$50.00 \times 10 = \500.00), then this \$500.00 is multiplied by the remaining ten Months ($\$500.00 \times 10 = \$5,000.00$). So the first year of Insurance Coverage would be $\$750.00 + \$5,000.00 = \underline{\$5,750.00}$.

Then the † takes over the computation for the remaining 61 years left on the Policy continuation, by either one of these two ways:

1.) \$100.00 gets multiplied by every \$100.00 inside of the \$1,000.00 ($\$100.00 \times 10 = \$1,000.00$, then this \$1,000.00 is multiplied by 13 Months ($\$1,000.00 \times 13 = \$13,000.00$), and finally this \$13,000.00 gets multiplied by 61 years that's left under the Contract ($\$13,000.00 \times 61 = \$793,000.00$) For the entire 62 years the Maximum Amount of Insurance would be $\$5,750.00 + \$793,000.00 = \underline{\$798,750.00}$.

or 2.) \$1,000.00 gets multiplied by the number 10 which is proportionately ($\$1,000.00 \times 10 = \$10,000.00$), and finally this \$10,000.00 gets multiplied by 61 years ($\$10,000.00 \times 61 = \$610,000.00$), For the entire 62 years the Maximum Amount of Insurance would be $\$5,750.00 + \$610,000.00 = \underline{\$615,750.00}$

NOTE: The Contract (Insurance Policy) says "For Age at Issue 1 the maximum amount shall be in effect commencing on the first anniversary of the Date of Issue;

A policy is ambiguous if "it is capable of two or more constructions, both of which are reasonable." Waller v. Truck Ins. Exchange Inc., 11 Cal. 4th 1 [44 Cal Rptr. 2d 370, 900 P. 2d 619, 627 (1995)]... When ambiguity exists, the provision should be "interpreted most strongly against the party who caused the uncertainty to exist." Calif. Civil Code §1654. Moreover, in the context of Insurance Policies, "any ambiguous terms are

resolved in the Insureds favor, consistent with the Insureds reasonable expectations.'" E.M.M.I. Inc. v. Zurich Am. Ins., 32 Cal. 4th 465, [9 Cal. Rptr. 3d 701, 84 P. 3d 385, 389 (2004)] (quoting Safeco Ins. Co. v. Robert S. 26 Cal. 4th 758, [110 Cal. Rptr. 2d 844, 28 P. 3d 889, 893 (2001)]. In State Farm Mut. Auto Ins. Co. v. Jacober held, A layman attempting to interpret an insurance policy, however, is not likely to have the legal sophistication to deduce what an insurance company is attempting to accomplish by an ambiguous exclusionary clause; it is on just grounds that exclusions be "conspicuous, plain and clear." (10 Cal. 3d 193, 207 [10-15-1973]) (Steven v. Fidelity & Casualty Co. (1962) 58 Cal. 2d 862, 878 [27 Cal. Rptr. 172, 377 P. 2d 284]; Bodell v. Walbrook Ins. Co. 119 F.3d 1411, 1997 U.S. LEXIS 17813, 97 Cal. Daily Op. Service 5689, 97 D.A.R. 9182.

In the case before the Court, the Magistrate Judge's Findings & Recommendations were clearly not base from the Contract (Insurance Policy #5433839134), but through the Magistrate Judge's own words was based from "extrinsic evidence," although the Contract is unambiguous & explicitly clear. The Magistrate Judge's Findings & Recommendation also allude to the Defendant's (AIG) making a factual challenge to plaintiff's assertions of jurisdiction, therefore has the belief in one of three different stories told by the Defendant's (AIG); "WEEKLY PREMIUMS NA" ; "\$28.60 ANNUAL PREMIUMS" ; or "0.55¢ WEEKLY PREMIUMS." However, the Magistrate Judge's Findings & Recommendation must support either the May 23, 2018 version of the policy submitted by the Defendant's (AIG) (See EXHIBIT "C" AIG PACKET 5/23/2018 pgs. 4-7), or the Aug. 27, 2018 version of the policy submitted by the Defendant's (AIG) (See EXHIBIT "D" AIG PACKET 8/27/2018 pgs. 4-7), over the real one which the Laser Copy is made from, which the Plaintiff's does maintain. The Magistrate Judge's Findings & Recommendations is "not" supported by the Laser Copy of the Insurance Policy (Contract), but He allowed the plaintiff's to initially proceed under Diversity Jurisdiction from the Contract.

1 The Magistrate Judge's Finding & Recommendations noted at
2 page 4 lines 12-13 "As denoted on Binns's copy of the Policy,
3 submitted alongside his original Complaint," which the plaintiff's
4 also provided a Laser Copy of the Premium Reciept Book to the
5 Contract (Insurance Policy #5433839134). The Findings & Recommend-
6 ations fail to acknowledge the asterisk* inside of the \$1000
7 maximum amount of insurance, which demonstrate's the computation's
8 completed by the plaintiff's on page 15, and calculated for each
9 "Policy year are counted from the Date of Issue and its annivers-
10 aries." (See Laser copy of Insurance Policy pg. 4) So the Magist-
11 rate Judge Kendall J. Newman went from relying upon the CONTRACT
12 (Insurance Policy #5433839134) on July 31, 2020; approving that
13 Plaintiff's "satisfied the amount-in-controversy," and now incorr-
14 ectly alleging that the Defendant's brought an factual challenge
15 to the Diversity Jurisdiction from extrinsic evidence. The Finding
16 and Recommendation also failed to acknowledge the fact that the
17 Defendant's (AIG) submitted two (2) distinctly diffrent versions
18 of the policy, with each Schedule page reflecting the weekly
19 premiums as "NA" and ".55¢," if the plaintiff's had not been
20 able to come-up with the real Contract (Insurance Policy), the
21 Defendant's (AIG) fraud, intentional misrepresentation, and breach
22 of contract could not be contested... Now the Defendant's (AIG)
23 have tried to dismiss the computations asto how the *asterisk
24 application to the \$1,000.00 MAXIMUM AMOUNT OF INSURANCE*, referen-
25 ced as follows: "inapplicable formulas" ; "reduced amount of
26 insurance" ; "This formula is therefore irrelevant to determining
27 the "value" of the plicy." (See REPLY IN SUPPORT OF MOTION TO
28 DISMISS OF DEFENDANTS pages 2 lines 12-28 and page 3 lines 1-7)
The California Civil Code §1638, §1641, §1644, and §1646 all
governs interpretation of Contracts, plus the Contract does not
mention any exclusionary "inapplicable formulas" concerning the
\$1,000.00 MAXIMUM AMOUNT OF INSURANCE*, and the computation of
either the \$798,750.00 or \$610,750.00 does not have neither the
two Nonforfeiture Benefits or 3% Interest for 62 years added. The
language is unambiguous and explicitly clear too, and the Magistrate
Judge failed to apply those *asterisk computations.

PROOF OF SERVICE BY MAIL

I, Keyron L. Binns, AM A RESIDENT OF FOLSOM STATE PRISON IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA. I AM OVER THE AGE OF 18 YEARS, AND I AM/AM NOT A PARTY TO THIS ACTION.

MY PRISON NUMBER IS: #E94600.

MY PRISON ADDRESS IS: P.O. BOX 950, Folsom, CA 95763.

ON August 10, 2021 I SERVED A COPY OF THE FOLLOWING DOCUMENT: **OBJECTIONS TO THE MAGISTRATE JUDGES FINDINGS & RECOMMENDATIONS.**

ON THE FOLLOWING PARTIES BY PLACING THE DOCUMENTS INTO A SEALED ENVELOPE WITH POSTAGE FULLY PAID, INTO THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT FOLSOM STATE PRISON (MAILBOX RULE), REPRESA, CALIFORNIA, AND ADDRESSED AS FOLLOWS:

TO: UNITED STATES COURT, OFFICE OF THE CLERK
EASTERN DISTRICT OF CALIFORNIA
501 1st., STE 4-200
Sacramento, CA. 95814-2322

TO: JODI K. SWICK No. 228634
JOHN T. BURNITE No. 162223
1 Kaiser Plaza, Suite 340
Oakland, CA. 94612


TO: SHARIF ALI GENTRY SR.
13507 Mistle Toe Ave.
Chino, CA. 91710
(Plaintiff #2)

THERE IS DELIVERY SERVICE BY THE UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND/OR THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED August 10, 2021 AT REPRESA, CALIFORNIA.

XX


Signature